

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOSE ALFREDO HERNANDEZ,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 3:11-CV-0798-D
VS.	§	
	§	
INSURANCE COMPANY OF THE	§	
STATE OF PENNSYLVANIA, et al.,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION
AND ORDER

The court stays this case, and consideration of defendants' motion to dismiss, pending a decision by the Supreme Court of Texas in *Texas Mutual Insurance Co. v. Ruttiger*, 2011 WL 3796353 (Tex. Aug. 26, 2011), *reh'g granted*, (Feb. 17, 2012).*

On November 21, 2011 defendants Insurance Company of the State of Pennsylvania and Chartis Claims, Inc. f/k/a AIG Domestic Claims, Inc. filed a motion to dismiss under Fed. R. Civ. P. 12(b)(1) and (6), seeking dismissal of the claims of plaintiff Jose Alfredo Hernandez ("Hernandez"). Based on the court's review of defendants' motion, it appears that *Ruttiger* will impact the viability of most of Hernandez's claims. But the Supreme Court of Texas has granted rehearing in *Ruttiger*. Because the Supreme Court of Texas can modify

*Under § 205(a)(5) of the E-Government Act of 2002 and the definition of "written opinion" adopted by the Judicial Conference of the United States, this is a "written opinion[]" issued by the court" because it "sets forth a reasoned explanation for [the] court's decision." It has been written, however, primarily for the parties, to decide issues presented in this case, and not for publication in an official reporter, and should be understood accordingly.

its opinion and judgment in *Ruttiger* after rehearing, *see* Tex. R. App. P. 64, this court will not rely on the original *Ruttiger* opinion to decide defendants' motion. Instead, the court will stay this case and its ruling on the motion to dismiss while awaiting the decision in *Ruttiger* on rehearing.

The parties are directed to advise the court promptly once the decision on rehearing has been issued. The court will then decide how to proceed in this case. If a party at any time has cause to request that the stay be lifted, it may move the court to lift the stay.

SO ORDERED.

May 3, 2012.


SIDNEY A. FITZWATER
CHIEF JUDGE